

SENATE BILL No. 339

DIGEST OF INTRODUCED BILL

Citations Affected: IC 36-4-3.

Synopsis: Annexation as a local public question. Requires a municipality to annex an entire election precinct. Provides that if a municipality in a county other than St. Joseph County satisfies the annexation requirements at the remonstrance hearing, the court must: (1) enter a judgment that the municipality has satisfied the annexation requirements; and (2) certify the proposed annexation as a local public question to be voted on by voters in the proposed annexed territory at the next general election. Provides that if a city in St. Joseph County satisfies the annexation requirements at the remonstrance hearing and the landowners of the territory to be annexed fail to satisfy the requirements to stop an annexation, the court must enter a judgment
(Continued next page)

Effective: July 1, 1999.

Bowser

January 8, 1999, read first time and referred to Committee on Governmental and Regulatory Affairs.



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that the city has satisfied the annexation requirements and certify the proposed annexation as a local public question. Provides that if a majority of votes cast are in favor of the proposed annexation, the annexation must take place unless a court on appeal finds that the city failed to satisfy the annexation requirements. Provides that if a majority of votes cast are not in favor of the proposed annexation, the annexation may not take place and a pending appeal of the judgment becomes moot. Requires a municipality to provide written notice of a hearing concerning a proposed annexation to each owner of real property located within the territory proposed to be annexed. Requires the clerk of the municipality to submit a description and a map of the territory proposed to be annexed to the circuit court clerk in the county in which the annexed territory is located. Requires the circuit court clerk to determine the registered voters within: (1) the territory proposed to be annexed; and (2) each precinct within the territory proposed to be annexed. Requires the circuit court clerk to submit the voter information to the county election board. Provides that the act applies to a municipality that adopts an annexation ordinance after June 30, 1999.

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Introduced

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

SENATE BILL No. 339

A BILL FOR AN ACT to amend the Indiana Code concerning local government.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 36-4-3-2.1 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 2.1. A municipality
3 may adopt an ordinance under this chapter only after the legislative
4 body has held a public hearing concerning the proposed annexation.
5 All interested parties must have the opportunity to testify as to the
6 proposed annexation. Notice of the hearing shall be:
7 (1) published in accordance with IC 5-3-1; and
8 (2) **mailed as set forth in section 2.2 of this chapter.**
9 SECTION 2. IC 36-4-3-2.2 IS ADDED TO THE INDIANA CODE
10 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
11 1, 1999]: Sec. 2.2. (a) **Before a municipality may annex territory,**
12 **the municipality shall provide written notice of the hearing**
13 **required under section 2.1 of this chapter. The notice shall be sent**
14 **by certified mail at least thirty (30) days before the date of the**
15 **hearing to each owner of real property, as shown on the county**



auditor's current tax list, whose real property is located within the territory proposed to be annexed.

(b) The notice required by this section must include the following:

(1) The date, time, location, and subject of the hearing.

(2) A statement of the municipality's intent to annex the territory.

(3) A description of the real property proposed to be annexed sufficient to identify the proposed territory.

(4) A statement that the owner's property is located within the territory proposed to be annexed.

(c) If the notice is returned unclaimed or refused, the municipality shall mail the notice by regular mail not later than one (1) business day after receiving the returned notice. A notice sent by regular mail under this subsection is not required to be sent at least thirty (30) days before the date of the hearing.

(d) If the municipality complies with this section, the notice is not invalidated if the owner does not receive the notice.

SECTION 3. IC 36-4-3-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 3. (a) The legislative body of a municipality may, by an ordinance defining the corporate boundaries of the municipality, annex territory that is contiguous to the municipality, subject to subsection (b) **and section 3.1 of this chapter.**

(b) If territory that was not contiguous (under section 1.5 of this chapter) was annexed in proceedings begun before May 1, 1981, an ordinance adopted after April 30, 1981, may not annex additional territory that is contiguous when the contiguity is based on the additional territory's boundaries with the previously annexed territory.

(c) Subsection (b) does not apply when the previously annexed territory has been used as a part of the contiguous boundary of separate parcels of land successfully annexed to the municipality before May 1, 1981.

(d) This subsection does not apply to a town that has abolished town legislative body districts under IC 36-5-2-4.1. An ordinance described by subsection (a) must assign the territory annexed by the ordinance to at least one (1) municipal legislative body district.

SECTION 4. IC 36-4-3-3.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 3.1. (a) A municipality may not annex territory that contains less than an entire election precinct.**

(b) For purposes of this chapter, the boundaries of an election precinct are the boundaries as of the date the municipality adopts



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1 **the annexation ordinance under section 3 or 4 of this chapter.**

2 SECTION 5. IC 36-4-3-4 IS AMENDED TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 1999]: Sec. 4. (a) The legislative body of a
4 municipality may, by ordinance, annex any of the following:

5 (1) Territory that is:

6 (A) contiguous to the municipality; **and**

7 (B) **composed of at least one (1) entire election precinct as**
8 **prescribed by section 3.1 of this chapter.**

9 (2) Territory that is not contiguous to the municipality and is
10 occupied by a municipally owned or operated airport or landing
11 field.

12 (3) Territory that is not contiguous to the municipality but is
13 found by the legislative body to be occupied by a municipally
14 owned or regulated sanitary landfill, golf course, or hospital.
15 However, if territory annexed under this ~~subsection~~ **subdivision**
16 ceases to be used as a municipally owned or regulated sanitary
17 landfill, golf course, or hospital for at least one (1) year, the
18 territory reverts to the jurisdiction of the unit having jurisdiction
19 before the annexation if the unit that had jurisdiction over the
20 territory still exists. If the unit no longer exists, the territory
21 reverts to the jurisdiction of the unit that would currently have
22 jurisdiction over the territory if the annexation had not occurred.
23 The clerk of the municipality shall notify the offices required to
24 receive notice of a disannexation under section 19 of this chapter
25 when the territory reverts to the jurisdiction of the unit having
26 jurisdiction before the annexation.

27 (b) This subsection applies to municipalities in a county having a
28 population of:

29 (1) more than seventy-three thousand (73,000) but less than
30 seventy-five thousand (75,000);

31 (2) more than sixty thousand (60,000) but less than sixty-five
32 thousand (65,000);

33 (3) more than forty-one thousand (41,000) but less than forty-two
34 thousand five hundred (42,500);

35 (4) more than thirty-eight thousand three hundred (38,300) but
36 less than thirty-eight thousand five hundred (38,500);

37 (5) more than thirty-five thousand four hundred (35,400) but less
38 than thirty-six thousand (36,000);

39 (6) more than twenty-four thousand eight hundred (24,800) but
40 less than twenty-five thousand (25,000);

41 (7) more than twenty-two thousand (22,000) but less than
42 twenty-three thousand (23,000); or

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(8) more than two hundred thousand (200,000) but less than three hundred thousand (300,000).

Except as provided in subsection (c), the legislative body of a municipality to which this subsection applies may, by ordinance, annex territory that is not contiguous to the municipality, has its entire area not more than two (2) miles from the municipality's boundary, is to be used for an industrial park containing one (1) or more businesses, and is either owned by the municipality or by a property owner who consents to the annexation. However, if territory annexed under this subsection is not used as an industrial park within five (5) years after the date of passage of the annexation ordinance, or if the territory ceases to be used as an industrial park for at least one (1) year, the territory reverts to the jurisdiction of the unit having jurisdiction before the annexation if the unit that had jurisdiction over the territory still exists. If the unit no longer exists, the territory reverts to the jurisdiction of the unit that would currently have jurisdiction over the territory if the annexation had not occurred. The clerk of the municipality shall notify the offices entitled to receive notice of a disannexation under section 19 of this chapter when the territory reverts to the jurisdiction of the unit having jurisdiction before the annexation.

(c) A city in a county with a population of more than two hundred thousand (200,000) but less than three hundred thousand (300,000) may not annex territory as prescribed in subsection (b) until the territory is zoned by the county for industrial purposes.

(d) Notwithstanding any other law, territory that is annexed under subsection (b) or (h) is not considered a part of the municipality for the purposes of:

(1) annexing additional territory:

(A) in a county that is not described by clause (B); or

(B) in a county having a population of more than two hundred thousand (200,000) but less than three hundred thousand (300,000), unless the boundaries of the noncontiguous territory become contiguous to the city, as allowed by Indiana law;

(2) expanding the municipality's extraterritorial jurisdictional area; or

(3) changing an assigned service area under IC 8-1-2.3-6(1).

(e) As used in this section, "airport" and "landing field" have the meanings prescribed by IC 8-22-1.

(f) As used in this section, "hospital" has the meaning prescribed by IC 16-18-2-179(b).

(g) An ordinance adopted under this section must assign the



territory annexed by the ordinance to at least one (1) municipal legislative body district.

(h) This subsection applies to a municipality having a population of more than thirty-two thousand (32,000) but less than thirty-three thousand (33,000) that is located within a county having a population of more than seventy-three thousand (73,000) but less than seventy-five thousand (75,000). The legislative body of a municipality may, by ordinance, annex territory that:

- (1) is not contiguous to the municipality;
- (2) has its entire area not more than eight (8) miles from the municipality's boundary;
- (3) does not extend more than:
 - (A) one and one-half (1 1/2) miles to the west;
 - (B) three-fourths (3/4) mile to the east;
 - (C) one-half (1/2) mile to the north; or
 - (D) one-half (1/2) mile to the south;
 of an interchange of an interstate highway (as designated by the federal highway authorities) and a state highway (as designated by the state highway authorities); and
- (4) is owned by the municipality or by a property owner that consents to the annexation.

SECTION 6. IC 36-4-3-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 13. (a) Except as provided in subsection (e), at the hearing under section 12 of this chapter, the court shall ~~order a proposed annexation to take place~~ **enter a judgment that the municipality has satisfied the annexation requirements and certify the annexation as a local public question under section 13.1 of this chapter** if the following requirements are met:

- (1) The requirements of either subsection (b) or (c).
- (2) The requirements of subsection (d).

(b) The requirements of this subsection are met if the evidence establishes the following:

- (1) That the territory sought to be annexed is contiguous to the municipality.
- (2) One (1) of the following:
 - (A) The resident population density of the territory sought to be annexed is at least three (3) persons per acre.
 - (B) Sixty percent (60%) of the territory is subdivided.
 - (C) The territory is zoned for commercial, business, or industrial uses.

(c) The requirements of this subsection are met if the evidence



1 establishes the following:

2 (1) That the territory sought to be annexed is contiguous to the
 3 municipality as required by section 1.5 of this chapter, except that
 4 at least one-fourth (1/4), instead of one-eighth (1/8), of the
 5 aggregate external boundaries of the territory sought to be
 6 annexed must coincide with the boundaries of the municipality.

7 (2) That the territory sought to be annexed is needed and can be
 8 used by the municipality for its development in the reasonably
 9 near future.

10 (d) The requirements of this subsection are met if the evidence
 11 establishes that the municipality has developed a written fiscal plan and
 12 has established a definite policy, by resolution of the legislative body,
 13 as of the date of passage of the annexation ordinance. The resolution
 14 must show the following:

15 (1) The cost estimates of planned services to be furnished to the
 16 territory to be annexed.

17 (2) The method or methods of financing the planned services.

18 (3) The plan for the organization and extension of services.

19 (4) That planned services of a noncapital nature, including police
 20 protection, fire protection, street and road maintenance, and other
 21 noncapital services normally provided within the corporate
 22 boundaries, will be provided to the annexed territory within one
 23 (1) year after the effective date of annexation, and that they will
 24 be provided in a manner equivalent in standard and scope to those
 25 noncapital services provided to areas within the corporate
 26 boundaries that have similar topography, patterns of land use, and
 27 population density. However, in a county having a population of
 28 more than two hundred thousand (200,000) but less than three
 29 hundred thousand (300,000), the resolution of a city must show
 30 that these services will be provided in a manner equivalent in
 31 standard and scope to those noncapital services provided to areas
 32 within the corporate boundaries, regardless of similar topography,
 33 patterns of land use, or population density.

34 (5) That services of a capital improvement nature, including street
 35 construction, street lighting, sewer facilities, water facilities, and
 36 stormwater drainage facilities, will be provided to the annexed
 37 territory within three (3) years after the effective date of the
 38 annexation, in the same manner as those services are provided to
 39 areas within the corporate boundaries, that have similar
 40 topography, patterns of land use, and population density, and in
 41 a manner consistent with federal, state, and local laws,
 42 procedures, and planning criteria. However, in a county having a

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population of more than two hundred thousand (200,000) but less than three hundred thousand (300,000), the resolution of a city must show that these services will be provided to the annexed territory within four (4) years after the effective date of the annexation and in the same manner as those services are provided to areas within the corporate boundaries, regardless of similar topography, patterns of land use, or population density.

(6) The plan for hiring the employees of other governmental entities whose jobs will be eliminated by the proposed annexation, although the municipality is not required to hire any employees.

(e) This subsection applies only to cities located in a county having a population of more than two hundred thousand (200,000) but less than three hundred thousand (300,000). However, this subsection does not apply if on April 1, 1993, the entire boundary of the territory that is proposed to be annexed was contiguous to territory that was within the boundaries of one (1) or more municipalities. At the hearing under section 12 of this chapter, the court shall do the following:

(1) Consider evidence on the conditions listed in subdivision (2).

(2) Order a proposed annexation not to take place if the court finds that all of the following conditions exist in the territory proposed to be annexed:

(A) The following services are adequately furnished by a provider other than the municipality seeking the annexation:

(i) Police and fire protection.

(ii) Street and road maintenance.

(B) The annexation will have a significant financial impact on the residents or owners of land.

(C) One (1) of the following opposes the annexation:

(i) A majority of the owners of land in the territory proposed to be annexed.

(ii) The owners of more than seventy-five percent (75%) in assessed valuation of the land in the territory proposed to be annexed.

Evidence of opposition may be expressed by any owner of land in the territory proposed to be annexed.

(f) The federal census data established by IC 1-1-4-5(17) shall be used as evidence of resident population density for purposes of subsection (b)(2)(A), but this evidence may be rebutted by other evidence of population density.

SECTION 7. IC 36-4-3-13.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY

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1, 1999]: **Sec. 13.1. (a) If the court finds that the municipality satisfied the annexation requirements at the hearing under section 12 of this chapter, the court shall certify the question of whether the territory should be annexed by the municipality as a local public question under IC 3-10-9-3.**

(b) Except as provided in subsection (c), the court shall order the county election board to place the local public question on the ballot at the next general election for which the question can be certified in compliance with IC 3-10-9-3.

(c) The registered voters of the area proposed to be annexed shall vote on the local public question.

SECTION 8. IC 36-4-3-13.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 13.2. (a) The county election board shall place the local public question on the ballot in the form prescribed by IC 3-10-9-4.**

(b) The local public question must state the following:

"Shall (here insert the name of the municipality) annex the following territory?:

(here insert a description of the territory proposed to be annexed as prescribed in subsection (c))".

(c) The local public question must generally describe the boundaries of the territory proposed to be annexed by the municipality. The description must set out the boundaries of the territory as near as reasonably possible by streets, rivers, and other similar boundaries that are known by common names, and where this is not possible, by section lines or other legal description.

SECTION 9. IC 36-4-3-13.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 13.3. (a) The clerk of the municipality shall submit a description and a map of the territory proposed to be annexed to the circuit court clerk in the county in which the annexed territory is located.**

(b) The circuit court clerk shall determine the registered voters within:

(1) the territory proposed to be annexed; and

(2) each precinct within the territory proposed to be annexed.

(c) The circuit court clerk shall submit the information under subsection (b) to the county election board.

SECTION 10. IC 36-4-3-13.4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS



[EFFECTIVE JULY 1, 1999]: **Sec. 13.4. (a) If a majority of the votes cast on the local public question are not in favor of the proposed annexation:**

(1) the annexation may not take place; and

(2) a pending appeal of the judgment under section 13 of this chapter becomes moot.

(b) Except as provided in subsection (c), if a majority of the votes cast on the local public question are in favor of the proposed annexation, the annexation shall take place.

(c) If a higher court determines on appeal of the judgment under section 13 of this chapter that the municipality failed to satisfy the annexation requirements, the annexation may not take place.

(d) The circuit court clerk shall certify the results of the local public question to the court that conducts the hearing under section 12 of this chapter. The court shall enter a judgment on the issue of whether the annexation should take place in compliance with this section.

SECTION 11. IC 36-4-3-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 15. (a) The court's judgment under section 12, 13.4, or 15.5 of this chapter must specify the annexation ordinance on which the remonstrance is based. The clerk of the court shall deliver a certified copy of the judgment to the clerk of the municipality. The clerk of the municipality shall:**

(1) record the judgment in the clerk's ordinance record; and

(2) make a cross-reference to the record of the judgment on the margin of the record of the annexation ordinance.

(b) If a judgment under section 12, 13.4, or 15.5 of this chapter is adverse to annexation, the municipality may not make further attempts to annex the territory during the two (2) years after the later of:

(1) the judgment of the circuit or superior court; or

(2) the date of the final disposition of all appeals to a higher court; unless the annexation is petitioned for under section 5 of this chapter.

(c) If a judgment under section 12, 13.4, or 15.5 of this chapter orders the annexation to take place, the annexation is effective when the clerk of the municipality complies with the filing requirement of section 22(a) of this chapter.

SECTION 12. [EFFECTIVE JULY 1, 1999] **IC 36-4-3-2.1, IC 36-4-3-3, IC 36-4-3-4, IC 36-4-3-13, and IC 36-4-3-15, all as amended by this act, and IC 36-4-3-2.2, IC 36-4-3-3.1, IC 36-4-3-13.1, IC 36-4-3-13.2, IC 36-4-3-13.3, and IC 36-4-3-13.4, all as added by this act, apply to a municipality that adopts an**

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1 **annexation ordinance after June 30, 1999.**

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